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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170630611-8525-02]

RIN 0648-BH01

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic Regions; Regulatory Amendment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements management measures described in Regulatory Amendment 4 to the Fishery Management Plan for Spiny Lobster in the Gulf of Mexico (Gulf) and South Atlantic (FMP), as prepared and submitted by the Gulf and South Atlantic Fishery Management Councils (Councils). This final rule increases the annual catch limit (ACL) for spiny lobster based on updated landings information and revised scientific recommendations. This final rule also prohibits the use of traps for recreational harvest of spiny lobster in the South Atlantic exclusive economic zone (EEZ) off Georgia, South Carolina, and North Carolina. The purposes

of this final rule are to ensure catch levels for spiny lobster are based on the best scientific information available, to prevent overfishing, and to minimize potential negative effects of traps on habitat and protected species interactions in the South Atlantic EEZ.

DATES: This final rule is effective on [*insert date 30 calendar days after date of publication in the Federal Register*].

ADDRESSES: Electronic copies of Regulatory Amendment 4, which includes an environmental assessment and a regulatory flexibility analysis, and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_sa/spiny_lobster/A4_lobster_acl/a4_lobster_acl_index.html.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf and the South Atlantic is managed under the FMP. The FMP was prepared by the Councils and implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C 1801 *et seq.*).

On February 2, 2018, NMFS published a proposed rule for Regulatory Amendment 4 in the *Federal Register* and requested public comment (83 FR 4890). Regulatory Amendment 4 and the proposed rule outline the rationale for the actions contained in this final rule. A summary of the management measures described in Regulatory Amendment 4 and implemented by this final rule is provided below.

Management Measures Contained in this Final Rule

This final rule modifies the stock ACL and annual catch target (ACT) for spiny lobster and prohibits the use of traps for the recreational harvest of spiny lobster in the South Atlantic EEZ.

Stock ACL and ACT

This final rule revises the stock ACL and ACT based on the new acceptable biological catch (ABC) recommendation provided by the Councils' Scientific and Statistical Committees (SSCs). This final rule sets the ACL equal to the recommended ABC of 9.60 million lb (4.35 million kg), which is based on the mean landings from the years 1991/1992-2015/2016 plus 1.5 standard deviations. This final rule sets the ACT at 8.64 million lb (3.92 million kg), which is 90 percent of the ACL. As established in Amendment 10 to the FMP (Amendment 10), the optimum yield

(OY) equals the ACT. NMFS does not expect the increase in the ACT and ACL to result in negative biological effects on the stock because current fishing effort is limited by several variables. These variables include the number of trap tags issued by the state of Florida, commercial and recreational bag and possession limits in the Gulf and South Atlantic EEZ, and the duration of the fishing season, which varies depending on the area where spiny lobsters are harvested.

Recreational Harvest of Spiny Lobster Using Traps in the South Atlantic EEZ

This final rule prohibits the use of traps for recreational harvest of spiny lobster in all of the South Atlantic EEZ.

The Councils are concerned that using these traps for recreational harvest may become more popular and result in potential negative impacts on essential fish habitat and an increase in the use of vertical lines that may interact with protected species, for example, by creating entanglement issues, continuing to fish after a trap is lost, or creating bycatch.

Measures in Regulatory Amendment 4 Not Codified through this Final Rule

As established in Amendment 10, the maximum sustainable yield (MSY) proxy and maximum fishing mortality threshold (MFMT) are equal to the OFL, which was set at 7.9 million lb (3.58 million kg). Consistent with Amendment 10, Regulatory Amendment 4 would modify the MSY proxy and MFMT values, so that they are equal to the revised OFL of 10.46 million lb (4.74 million kg).

Measures in this Final Rule Not Included in Regulatory Amendment 4

In addition to implementing the measures associated with Regulatory Amendment 4, this final rule corrects regulatory language that was mistakenly included in the final rule implementing Amendment 10. This final rule changes 50 CFR 622.407(c) to remove the phrase "whichever is greater" and the first occurrence of a duplicative sentence. This final rule also makes a minor wording revision to more directly state that the total number of undersized spiny lobster allowed on-board a vessel is 50 plus 1 per trap.

Comments and Responses

A total of 14 comments were received on the proposed rule to implement Regulatory Amendment 4. Comments that were beyond the scope of the proposed rule and comments

that agreed with the proposed actions are not responded to in this final rule. Other comments that relate to the actions contained in Regulatory Amendment 4 and the proposed rule are grouped as appropriate and summarized below, followed by NMFS' respective responses.

Comment 1: The ACL for spiny lobster should not be increased. The ACL should remain at its current level for another 5 years to allow the spiny lobster populations to increase.

Response: NMFS disagrees. The new ACL is consistent with a new ABC recommendation by the Councils' SSCs. The prior ABC recommendation was based on a time period when landings were historically low. The new ABC and the corresponding increase in the ACL are based on a longer time period (1991/1992 through 2015/2016) to better capture the dynamics of the fishery that are influenced by factors beyond spiny lobster biology and harvest, such as environmental, economic, and social conditions. As described in Regulatory Amendment 4, increasing the ACL is not expected to negatively affect the spiny lobster population because fishing effort is not expected to increase. Current fishing effort is limited by such measures as the number of commercial trap tags issued by

the state of Florida, commercial and recreational bag and possession limits in the South Atlantic and Gulf EEZ, and the duration of the fishing seasons, which varies based on location. Further, maintaining the current ACL for 5 years would not necessarily allow for the spiny lobster populations to increase in U.S. waters. Spiny lobster is widely distributed throughout the western Atlantic Ocean from as far north as North Carolina to as far south as Brazil, including Bermuda, The Bahamas, Caribbean, and Central America. Genetic studies show that most larval recruits in U.S. waters are from elsewhere in the Caribbean, with only 10-40 percent locally spawned larvae retained in U.S. waters.

Comment 2: The timeframe used to specify catch limits for spiny lobster should be continuously updated to incorporate periods of low and high landings, natural disasters such as hurricanes, and to allow for accurate estimates of the stock OFL and ABC.

Response: NMFS agrees that is appropriate to reevaluate the ABC, which is used to set the catch limit, when relevant new information becomes available. That is what occurred through the process leading to up to the Council proposing Regulatory Amendment 4. As explained

above, the current OFL and ABC for spiny lobster were established using the mean of the most recent 10 years of landings at that time (*i.e.*, fishing years 2000/2001 through 2009/2010). The Councils' SSCs reevaluated this approach in 2016 in response to a recommendation from a review panel, which was convened as required by the accountability measures when landings exceeded the ACT. The SSCs agreed with the review panel's recommendation to use a longer time series of landings (*i.e.*, fishing years 1991/1992 through 2015/2016) to re-specify the OFL and ABC for spiny lobster. This resulted in the increase in the ACL and ACT implemented through this final rule. Regulatory Amendment 4 also states that a review panel should be convened if there are 2 consecutive years of low landings (below 5.3 million lb). Thus, there are mechanisms in place to respond to changes in harvest and update the ACL as appropriate.

Comment 3: The increase in spiny lobster ACL and prohibition of recreational harvest using traps will allow more commercial harvest of spiny lobster. This will have an economic impact on small business entities and therefore, as a result of increased commercial harvest, NMFS should prepare an initial regulatory flexibility act analysis

(IRFA) to better address the economic impacts of these actions.

Response: NMFS disagrees that it is necessary to prepare an IRFA. As stated in the **Classification** section of the proposed rule and again in this final rule, the increase in the ACL and ACT for spiny lobster will have no impact on small commercial fishing businesses because the AMs do not require a closure or otherwise limit commercial landings of spiny lobster taken from Federal waters if landings reach or exceed the ACL or ACT. Further, the majority of commercial harvest of spiny lobster occurs off Florida, and effort is limited by the number of trap tags issued by the state of Florida, commercial limits, and the length of the fishing season. Therefore, any reduction in the use of traps for recreational harvest is not expected to increase commercial harvest.

Comment 4: NMFS should not prohibit the use of traps for recreational harvest in the EEZ off North Carolina. To avoid interaction of traps with whales, it would be better to close the recreational fishing season for spiny lobster in the EEZ off North Carolina during the whale migration period.

Response: NMFS does not agree that a season restriction on the use of traps for recreational harvest is appropriate. Potential interactions between traps and protected species was one issue the Councils considered in deciding to prohibit the use of traps for recreational harvest in the EEZ off all of the South Atlantic states. However, the Councils were also concerned about bycatch and damage to habitat. Therefore, the Councils did not consider seasonal restrictions for recreational harvest of spiny lobster in Regulatory Amendment 4.

Comment 5: NMFS should allow the use of traps for recreational harvest in the EEZ off Florida to make current spiny lobster regulations consistent in the EEZ off all the states in the South Atlantic region. The proposed rule did not include any evidence that the recreational sector is harming the resource or its habitat as a result of trap use.

Response: NMFS disagrees that consistency in the regulations related to recreational harvest by traps should be achieved by allowing the use of traps in the EEZ off Florida. Consistency was not the basis for the Councils' decision to prohibit the use of this gear. Although current recreational harvest using traps in the EEZ outside Florida

is likely minimal, the Councils were concerned that there could be an increase in the use of recreational traps and associated negative impacts. As discussed in Regulatory Amendment 4, trap gear can negatively affect the bottom substrate, entangle protected species, and continue ghost fishing when the trap is lost. Because the majority of spiny lobster harvest occurs in the EEZ off Florida, opening this area to recreational traps would be expected to increase these negative impacts. In addition, because spiny lobsters are larger in the EEZ off Georgia, South Carolina, and North Carolina than in Florida, traps in those areas would require larger mouths (entrances) that would likely increase bycatch. Recreational harvest is still permitted with dive and snorkel gears, which are the predominant gears used by the recreational sector, and these gears do not have the same impact on habitat and other species as traps do.

Comment 6: Commercial harvest of spiny lobster has fluctuated, while recreational harvest, a small part of overall harvest, has remained consistent. In order to protect the resource, there should be restrictions on both the commercial and recreational sectors.

Response: Restrictions are already in place for spiny lobster in place for both the commercial and recreational sectors, and this final rule will not remove these restrictions. Commercial and recreational bag and possession limits, and fishing seasons for spiny lobster are in place to control harvest. Any person who commercially fishes for and sells spiny lobster caught in either the Gulf or South Atlantic EEZ, except off Florida, must have a Federal spiny lobster vessel permit. Any person who commercially fishes for spiny lobster caught in the EEZ off Florida, or sells spiny lobster in Florida must have the permits and licenses required by Florida (<http://www.myfwc.com/fishing/saltwater/commercial/spiny-lobster/>). There are also requirements related to gear and vessel identification, and trap construction.

Changes from the Proposed Rule

This final rule revises a reference to a boundary point coordinate for the Tortugas shrimp sanctuary in 50 CFR 622.55(c)(2)(iii), which incorrectly refers to paragraph (d)(1) rather than paragraph (c)(1).

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with

Regulatory Amendment 4, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here.

One public comment (*Comment 3*) stated that the increase in commercial harvest would have an economic impact on small entities and therefore an IRFA analysis must be prepared. As stated in the **Classification** section of the proposed rule, although the rule would increase the ACL and ACT, there would be no impact on small commercial fishing businesses because there are no AMs that can either

close the Federal season early or otherwise limit commercial landings of spiny lobster taken from Federal waters if landings reach or exceed the ACL or ACT.

No changes were made to the final rule in response to public comments, and NMFS has not received any new information that would affect its previous determination. As a result, a final regulatory flexibility analysis is not required and none was prepared.

The Assistant Administrator for NOAA Fisheries finds that with respect to the change to 50 CFR 622.55(c)(2)(iii) there is good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary. Such procedures are unnecessary because the rule implementing the provision has been subject to notice and comment and the revision corrects only a typographical error.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Gulf, South Atlantic, Spiny
lobster, Trap.

Dated: June 18, 2018

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory
Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts
600 and 622 are amended as follows:

PART 600--MAGNUSON-STEVENSON ACT PROVISIONS

1. The authority citation for part 600 continues to
read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

**Subpart R - Spiny Lobster Fishery of the Gulf of Mexico and
South Atlantic**

2. In § 600.725, in the table in paragraph (v), under
heading "III. South Atlantic Fishery Management Council,"
under entry 7, revise entry B pertaining to the

"Recreational fishery" in the "Authorized gear types" column to read as follows:

§ 600.725 General prohibitions.

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(v) * * *

Fishery	Authorized gear types
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III. South Atlantic Fishery Management Council

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7. South Atlantic Spiny Lobster Fishery (FMP):

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B. Recreational fishery	B. Dip net, bully net, snare, hand harvest.
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**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

3. The authority citation for part 622 continues to

read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

4. In § 622.55, revise paragraph (c)(2)(iii) to read as follows:

§ 622.55 Closed areas.

* * * *

(c) * * *

(2) * * *

(iii) Effective from May 26 through July 31, each year, that part of the Tortugas shrimp sanctuary seaward of rhumb lines connecting the following points is open to trawling: From point F, as specified in paragraph (c)(1) of this section, to point Q at 24°46.7' N. lat., 81°52.2' W. long. (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (c)(2)(i) of this section.

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5. In § 622.404, add paragraph (d) to read as follows:

§ 622.404 Prohibited gear and methods.

* * * *

(d) Except for black sea bass pots and golden crab traps as allowed in § 622.188 and § 622.248, respectively, the possession of all other traps is prohibited onboard a vessel in the South Atlantic EEZ when spiny lobster subject to the recreational bag and possession limits specified in § 622.408 is also onboard the vessel. The recreational harvest of spiny lobster using a trap is prohibited in the South Atlantic EEZ.

6. In § 622.407, revise paragraph (c) to read as follows:

§ 622.407 Minimum size limits and other harvest limitations.

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(c) *Undersized attractants.* A live spiny lobster under the minimum size limit specified in paragraph (a)(1) of this section that is harvested in the EEZ by a trap may be retained aboard the harvesting vessel for future use as an attractant in a trap provided it is held in a live well aboard the vessel. The live well must provide a minimum of $\frac{3}{4}$ gallons (1.7 liters) of seawater per spiny lobster. An undersized spiny lobster so retained must be released to the water alive and unharmed immediately upon leaving the trap lines and prior to 1 hour after official sunset each

day. No more than 50 undersized spiny lobsters plus 1 per trap aboard the vessel may be retained aboard for use as attractants.

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7. Revise § 622.411 to read as follows:

§ 622.411 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

For recreational and commercial spiny lobster landings combined, the ACL is 9.60 million lb (4.35 million kg), whole weight. The ACT is 8.64 million lb, (3.92 million kg) whole weight.

[FR Doc. 2018-13400 Filed: 6/21/2018 8:45 am; Publication Date: 6/22/2018]